

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**In the Matter of:**

**Amendment of the Commission's Rules  
Concerning Maritime Communications**

**Petition for Rule Making filed  
RegioNet Wireless License, LLC**

**PR Docket No. 92-257**

**RM-9664**

**To: The Commission**

**REPLY TO OPPOSITION TO  
PETITION FOR RECONSIDERATION**

Paging Systems, Inc. ("PSI"), by its attorneys and pursuant to the Federal Communications Commission ("FCC or Commission") Public Notice, Report No. 2573, released August 29, 2002, hereby submits its Reply to Opposition to the Mobex Communications, Inc. ("Mobex") and the PSI Petition for Reconsideration of the Second Memorandum Opinion and Order and Fifth Report and Order ("Fifth R&O"),<sup>1</sup> filed by Warren C. Havens on September 23, 2002 ("Opposition").

In this Reply to Opposition to Petition for Reconsideration ("Reply"), PSI is limiting its arguments to the Opposition's affirmation of the legality of the Commission's

---

<sup>1</sup> Second Memorandum Opinion and Order and Fifth Report and Order, FCC 02-74, released April 8, 2002.

actions with respect to reduction of the service area contours and co-channel interference protection of the Automated Maritime Telecommunications Service ("AMTS").<sup>2</sup>

## I.

### DISCUSSION

#### A. AMTS Precedent and Policy.

As PSI stated in its Petition for Reconsideration ("Petition"), as originally envisioned in Inland Waterways Communications Systems,<sup>3</sup> the 216-220 MHz band was chosen for AMTS because the propagation characteristics were superior, which reduced the number of coast stations needed throughout the system.<sup>4</sup> The important element in AMTS coverage was the concept of continuity of service, which was demanded by the prospective users of the system because of unpredictable river communications in the past.<sup>5</sup> The new frequency allocation for AMTS was then incorporated by the Commission into Part 80 of the rules.

At that time, the Commission stated that due to the closeness of AMTS to the present maritime bands, existing maritime equipment and technology would be readily adaptable.<sup>6</sup> It further stated that it agreed with the majority of commenters that the Commission should not adopt detailed technical standards, "Our intent is to provide a framework under which system development can begin but which will not unduly hinder innovation and flexibility."<sup>7</sup> What technical standards that were adopted were based on

---

2     See Opposition at 1-3.

3     84 F.C.C.2d 875 (1981), recon, 88 F.C.C.2d 678 (1981), aff'd sub nom. WJG Tel. Co., Inc. v. F.C.C., 675 F.2d 386 (D.C. Cir. 1982).

4     84 F.C.C.2d at ¶24.

5     84 F.C.C.2d at ¶3.

6     Supra at ¶75.

7     Supra at ¶78.

the Part 80 rules and in particular, with VHF operations.<sup>8</sup> The Part 80 rules provide for 17 dBu contours for the other Part 80 maritime services, including the VHF Public Coast Service, which 17 dBu contours were retained by the Commission in Auction 20 held in December 1998 for that service.

The fact that the 216-220 MHz band was close to the maritime bands and that it was placed in the Part 80 rules makes it obvious that AMTS was envisioned to operate within the engineering requirements of the maritime services, with the additional requirement that AMTS provide continuity of service. Thus, AMTS was to have parity with the other Part 80 licensees, along with the Commission endorsed flexibility. On that basis, the AMTS build-out was predicated upon the standards of contours, co-channel separation and interference protection which has been part of the AMTS initial regulatory framework for 20 years.

**B. The FCC Has Departed From Its AMTS Policy Without Adequate Explanation**

Through-out the earlier AMTS proceedings, the Commission had unwaveringly associated AMTS and its operations with other Part 80 maritime services, providing it engineering flexibility.<sup>9</sup> As recently as November 16, 2000, the Commission continued to offer more flexibility to AMTS with respect to its siting, construction and technical procedures in order to provide continuity of service.<sup>10</sup> Ironically, in an FCC letter, DA 02-2024, released August 15, 2002, the Chief, Public Safety and Private Wireless Division, stated:

---

8 Supra at ¶¶84-86.

9 Supra at ¶78.

10 Fourth Report and Order and Third Further Notice of Proposed Rule Making, 15 FCC Rcd 11585 (2000).

In the context of AMTS, the term 'integrated' **conveys the requirement that the base stations in an AMTS system must be connected, thereby ensuring seamless communication throughout the system** for a vessel traveling along a served waterway. (Emphasis Added.)

However, the arbitrary and capricious decision by the FCC in the referenced Fifth R&O, which effectively destroys this continuity of service of incumbents by imposing a 38 dBu contour -- a Part 90 service contour -- and a 10 dB co-channel protection for AMTS, flies in the face of all of the AMTS history.<sup>11</sup> The policy turnaround in the Fifth R&O was made without specific engineering rationale.<sup>12</sup> There was no adequate explanation or discussion on the reasons the FCC was changing its position.<sup>13</sup> And while the FCC can change its course, it must supply a reasoned analysis in support of such change.<sup>14</sup> There is no such analysis here. The Commission proposes standards that are at best based on speculative rationale. In fact, PSI has provided engineering analysis in its Petition which demonstrates that the Commission's conjectures are erroneous.<sup>15</sup>

In sum, although the Commission has shifted its position, it has provided neither proper justification; nor adequate discussion on how this shift can be explained in the

---

11 Although the Opposition states at 1-2 that there were no previous rules regarding contours, it is obvious that there were *de facto* rules relating to contours, since the AMTS operators have been applying for licenses under the 17 dBu Service contour and a 18 dB Carrier to Interference Ratio and the Commission was accepting and granting the applications. The AMTS licensees have operated under those *de facto* rules.

12 Fifth R&O at ¶31-33

13 Fifth R&O at ¶31.

14 "But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute." Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970); See also, AT&T Corporation v. FCC, 236 F. 3d 729, 736 (D.C. Cir. 2001) ("The FCC 'cannot silently depart from previous policies or ignore precedent' citing Committee for Community Access v. FCC, 737 F.2d.)

15 See PSI Petition at 4-6. See also, Davidson Consulting Engineering, Inc. ("Davidson") and Trott Communications Group, Inc. ("Trott") Studies, incorporated therein by reference from the Mobex Communications, Inc. Petition for Reconsideration, filed on August 23, 2002.

light of the past precedent; nor proper data justifying its new position. Nevertheless, a reasoned justification is required by the Administrative Procedures Act. Accordingly, since the Commission does not adequately explain its rationale for shifting its policy position from all of its past precedent, the Commission's decision on AMTS engineering standards, without any supporting data, is not reasoned decision-making.<sup>16</sup> In short, it is arbitrary and capricious decision-making.

**C. The Commission's Decision Disserves the Public Interest.**

In its initial Order, the Commission described the necessity for an AMTS river wide operation that would provide a continuity of service for the safety of tug, towboat and barge operators.<sup>17</sup> In 1997, the Commission stated, "The Maritime Service provides for the unique distress, operational, and personal communications needs of vessels at sea and on inland waterways. This service provides a vital emergency radio link, similar to the terrestrial '911' system, to ensure safety of life and property in the marine environment"<sup>18</sup> It added that "the primary purpose of this service is to provide for safety of life and property at sea."<sup>19</sup>

---

16 See United States Telecom Association, et al. v. Federal Communications Commission, 227 F.3d 450, 461 (D.C. Cir. (2000)). ("Fundamental principles of administrative law require that agency action be 'based on a consideration of the relevant factors,' Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 416 (1971),... and rest on reasoned decision-making in which 'the agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made,'" Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)).

17 84 F.C.C.2d at ¶3.

18 Second Report and Order and Second Further Notice of Proposed Rule Making, 12 FCC Rcd 16950, 16953 (1997).

19 12 FCC Rcd 16956.

With the new rules, the safety of the public is being threatened with the inevitability of non-continuous service, not just for the maritime community but the nation as a whole. This assault on AMTS coverage takes place at a time when the safety of the nation can ill afford it and when, in fact, the nation is gearing up in all sectors of society to protect itself from attacks. With the increased demands for protection of the nation's bridges, dams and other industrial complexes located near bodies of water because of the possibility of terrorists' acts on or around the water, continuity of coverage of AMTS operations is imperative for national security. The rule changes do not protect the public and consequently, they are not in the public interest.

## **II.**

### **CONCLUSION**

**WHEREFORE**, the above premises and those of its Petition considered, PSI respectfully requests that the Commission dismiss the Opposition to Petition for Reconsideration and reconsider its decision in the above-referenced proceeding to allow 17 dBu contour for incumbents and to adopt a 18 dB Carrier to Interference Ratio.

Respectfully submitted,

**PAGING SYSTEMS, INC.**



David L. Hill  
Audrey P. Rasmussen  
**ITS ATTORNEYS**

HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON, P.C.  
1120 20th Street, N.W.  
Suite 700, North Building  
Washington, D.C. 20036-3406  
Telephone (202) 973-1200  
Facsimile (202) 973-1212

Dated: October 1, 2002

**CERTIFICATE OF SERVICE**

I, Gladys L. Nichols, do hereby certify that on this 1st day of October 2002, a true and correct copy of the foregoing **REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION** was sent by U.S. Mail, with proper postage thereon fully paid, to:

Dennis C. Brown, Esquire  
126/B North Bedford Street  
Arlington, VA, 22201  
***Counsel for Mobex***

John Reardon  
Mobex Communications, Inc.  
225 Reinekers Lane  
Suite 770  
Alexandria, VA 22314

Warren C. Havens  
2509 Stuart Street  
Berkeley, CA 94705

/s/Gladys L. Nichols